

### **REMARKS**

This responds to the Office Action mailed on February 25, 2008. The Applicant has amended claims 16, 21-26, 28, and 31-34 and canceled claims 19, 20, 29, and 30. As a result, claims 16-17, 21-26, 28, and 31-35 are now pending in this application.

#### **35 U.S.C. §112, First Paragraph Rejection of the Claims**

Claims 24-26 and 28-35 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner “cannot find a description in the specification for a ‘buffer’” (Office Action Mailed on February 25, 2008 at page 3). The Applicant amended independent claim 24 to clarify that a “storage ... is configured to receive a plurality of frames.” Similarly, the Applicant amended independent claim 33 to clarify that a “storage ... is configured to receive a stream of Real Time Protocol (RTP) packets.” A “storage 22” is depicted in Figure 1 and disclosed at page 4, line 2.

Furthermore, the Examiner “cannot find support in the specification for ‘a processor’” and rejected claims 33-35 as a result. The Applicant respectfully submits that the specification does provide support for “a processor.” In particular, the specification discloses a “[p]rocessing block 24 thereupon joins to these data frames frame header” and that the “result of this processing is transiently stored in block 26 that accommodates multiple RTP payloads” (page 4, lines 3-6).

In view of the amendments and response, the Applicant submits that claims 24-26 and 28-35 contain subject matter that is described in the specification. Accordingly, the Applicant requests reconsideration and withdraw of the 35 U.S.C. §112, first paragraph rejections.

#### **§101 Rejection of the Claims**

Claims 24-26 and 28-32 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. As noted by the Office Action, the basis of this rejection is that “[o]ne of ordinary skill in the art could reasonably interpret claims 24-26 and 28-32 to be entirely implemented in software” (Office Action mailed February 25, 2008 at page 4). Applicant respectfully traverses the rejection. It has long been established that software implementations including programs and codes embodied in a computer media are inventions that are entitled to

patent protection and thus are considered patentable subject matter (In re Alappat, 33 F.3d 1526 (Fed. Cir. 1994) (en banc)). If a claimed invention as a whole produces a useful concrete and tangible result, then the invention is patentable (State Street Bank & Trust v. Signature Financial Group, 149 F.3d 1368 (Fed. Cir. 1998)). As recited in independent claim 24, Applicant submits that “creat[ing] a stream of Real Time Protocol (RTP) packets” and “include[ing] one or more of the set of localizing data in one or more RTP packets” are concrete (e.g., substantially repeatable), tangible (e.g., RTP packets), and useful (e.g., “facilitates distinguishing encrypted and non-encrypted content of the stream of RTP packets”). Applicant respectfully submits that, as a whole, the inventions claimed in independent claim 24, produce a useful, concrete and tangible result. Claims 25-26, 28, and 31-32, each of which depends directly or indirectly, are directed to statutory subject matter for at least the same reasons set forth for independent claim 24. Reconsideration and withdraw of the §101 rejections are respectfully requested.

#### §103 Rejection of the Claims

Pending claims 16-17, 19-26, and 28-33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,744,763 to Jones et al. (hereinafter “Jones”) in view of U.S. Patent No. 5,784,566 to Viavant et al. (hereinafter “Viavant”). Claims 16, 24, and 33 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,357,028 to Zhu in view of Viavant. Additionally, claims 34-35 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jones in view of Viavant and U.S. Patent No. 6,449,719 to Baker. For the reasons explained below, the Applicant respectfully asserts that Jones and Viavant do not teach the subject matter for which they are relied upon, and therefore amended independent claims 16, 24, and 33 and all dependent claims, are not obvious over Jones in view of Viavant, Zhu in view of Viavant, and Jones in view of Viavant and Baker.

Although the Applicant believes that the pending independent claims define over the art of record, the Applicant has amended independent claims 16, 24, and 33 to further clarify that a stream of packets is “a stream of Real Time Protocol (RTP) packets.” Furthermore, amended independent claims 16 and 24 have been amended to clarify that, in part, “the one or more of the [set of] localizing data is included in an RTP header of the one or more RTP packets,” and independent claim 33 has been amended to clarify that, in part, the “localizing data that is

included within an RTP header of the stream of RTP packets.” The localizing data also “facilitates distinguishing encrypted and non-encrypted content of the stream of RTP packets,” as recited in amended independent claims 16, 24, and 33.

Jones discloses a header that may be contained within a hint track. This header “may reference some data from an associated media track – in this case, a video track 405” (col. 10, lines 35-41). The header contained within the hint track is different from the RTP header, which is disclosed in: column 25, line 28; column 26, line 27; and Table 3. In these portions of Jones that disclose the RTP header, the RTP header does not include any “set of localizing data [that] further facilitates distinguishing encrypted and non-encrypted content of the stream of RTP packets,” as recited in amended independent claims 16, 24, and 33. As such, Jones does not teach and therefore does not suggest to one having ordinary skill in the art a set of localizing data included in an RTP header that “facilitates distinguishing encrypted and non-encrypted content of the stream of RTP packets,” as recited in amended independent claims 16, 24, and 33.

Furthermore, as noted in the Office Action, Viavant discloses a “[f]ield 226 contains, in encrypted form, the length of the unencrypted data” (col. 11, lines 9-11). However, as depicted in Figure 11, field 226 is not included in header field 222. In addition, Viavant does not disclose that the header field 222 depicted in Figure 11 is an RTP header. As such, Viavant does not teach and therefore does not suggest to one having ordinary skill in the art a set of localizing data included in an RTP header that “facilitates distinguishing encrypted and non-encrypted content of the stream of RTP packets,” as recited in amended independent claims 16, 24, and 33.

As Jones and Viavant fail to each every feature of the claimed invention, Applicant respectfully submits that amended independent claims 16, 24, and 33 are not obvious over Jones in view of Viavant. Claims 17, 21-23, 25-26, 28, 31-32, and 34-35, each of which depends from one of amended independent claims 16, 24 or 33, are likewise patentable under 35 U.S.C. §103(a) for at least the same reasons set forth above regarding the applicable independent claims. Applicant therefore respectfully requests the Examiner to withdraw the 35 U.S.C. §103(a) rejections of pending claims 16-17, 21-26, 28, and 31-35.

### **RESERVATION OF RIGHTS**

In the interest of clarity and brevity, Applicant may not have addressed every assertion made in the Office Action. Applicant's silence regarding any such assertion does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record are relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on official notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4047 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to deposit account No. 19-0743.

Respectfully submitted,

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Date 5/22/2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 22 day of May 2008.

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